

**NOTICE TO VENDORS**  
**REQUEST FOR PROPOSAL**

**The Iowa Telecommunications and Technology Commission operating the Iowa Communications Network (ICN) will be receiving sealed bid proposals until 3:00 p.m. Central Standard Time, June 29, 2016 for:**

**RFP 16-046**

**MARKETING AND PUBLIC RELATIONS SERVICES**

**Brian Clayton – Issuing Officer  
Iowa Communications Network  
400 East 14<sup>th</sup> Street  
Grimes State Office Building  
Des Moines, IA 50319  
Telephone 515-725-4616  
FAX 515-725-4774**

**Brian.clayton@iowa.gov**

Vendors must comply with all affirmative action/equal employment opportunity provisions of State and Federal laws.

THIS REQUEST FOR PROPOSAL CONSISTS OF FOUR CHAPTERS AND THREE ATTACHMENTS:

CHAPTER	TITLE
1	Administrative Issues
2	Contractual Terms
3	Service Requirements
4	Evaluation Criteria
Attachment 1	Proposal Compliance Form
Attachment 2	Terms and Conditions
Attachment 3	Authorization To Release Information

## CHAPTER 1 ADMINISTRATIVE ISSUES

1.1 Purpose. The ICN is seeking bid proposals from Vendors capable of providing marketing and public relations services for the Iowa Communications Network ("ICN") as described in Chapter 3.

1.1.1 Questions and Answers. Vendors are invited to submit written questions and requests for clarifications regarding the RFP. Vendors may also submit suggestions for changes to the requirements of this RFP. Oral questions will not be accepted or responded to by the ICN. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced.

1.1.2 The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before 4:00 p.m., central time, [June 17, 2016](#). The ICN will post the responses on the ICN web page, [www.icn.iowa.gov](http://www.icn.iowa.gov) by close of business [June 21, 2016](#). The ICN's written responses will be considered part of the RFP. If the ICN decides to adopt a suggestion, the ICN will issue an amendment to the RFP.

1.1.2.1 The ICN assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing by the ICN and incorporated into this RFP.

1.1.3 Changes and Amendments. The ICN reserves the right to amend the RFP at any time. If the ICN amends the RFP, the ICN will post the amendment on its web site. It is suggested that all Vendors check the ICN web page periodically, for updates, amendments, etc. Vendors' bid proposals must include acknowledgment of all amendments issued by ICN. If the ICN amends the RFP after the closing date of receipt of proposals, the ICN may, in its sole discretion, allow Vendors to amend their bid proposals in response to the ICN's amendment.

1.1.4 Receipt of Bid Proposals. Bid Proposals must be received at ICN's office no later than 3:00 p.m. central time [June 29, 2016](#). This requirement is a mandatory requirement and is not a minor deficiency subject to waiver by the ICN. No bid proposals will be accepted after the date and time specified. A late bid proposal shall be returned unopened to the Vendor. Additionally, no bid proposal will be accepted by telephone, electronic mail or facsimile. The bid proposals must be delivered to:

Brian Clayton – Issuing Officer  
Iowa Communications Network  
400 East 14<sup>th</sup> Street  
Grimes State Office Building  
Des Moines, IA 50319

1.1.4.1 If Vendor sends a Bid Proposal to the ICN, Vendor is requested to provide shipment confirmation and tracking numbers to the Issuing Officer [brian.clayton@iowa.gov](mailto:brian.clayton@iowa.gov).

1.1.5 Bid Proposal Opening. The ICN will open bid proposals at 3:00 p.m. central time on [2016](#). Vendors may attend the bid opening if they wish, but no price information or any other information contained in any bid will be made public at that time. The bid proposals and the evaluation documents created by the ICN will remain confidential subject to Iowa Code Section 72.3 until the evaluation committee has evaluated all bid proposals submitted in response to this RFP and the ICN has issued a notice of intent to award the contract. The bid proposals submitted and the evaluation documents created by the ICN will be available for inspection subject to the exceptions described in Iowa Code Chapter 22 or other applicable law only after the selection process is complete.

1.1.5.1 Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP or that fail to provide all of the information requested may be disqualified. Verbal information provided by the Vendor shall not be considered part of the Vendor's bid proposal.

1.1.5.2 All bid proposals shall be firm for a minimum period of one hundred and eighty (180) days to allow the evaluation committee to fully evaluate all bid proposals and make an award deemed to be in the best interest of ICN and the State of Iowa. The ICN reserves the right to issue an award either prior to, or beyond the 180 days after proposal deadline if it is in the best interests of ICN, in ICN's sole opinion, to do so. If the award is not issued within 180 days, Vendors that submitted bid proposals will be given the opportunity to confirm that the price and other factors in the bid proposal, are still valid.

1.1.5.3 By submitting a bid proposal the Vendor agrees to the terms and conditions contained within this RFP.

## 1.2 Proposal Format.

1.2.1 Bid Proposals shall be printed on 8.5" x 11" paper. **One original and one (1) copy must accompany each submission.** The original bid proposal and copies must be in a package very clearly marked "RFP 14-094 Bid Proposal". **In addition, one (1) soft copy of the bid proposal shall be provided on CD or USB drive using Microsoft Word and Excel software, if the proposal includes spreadsheets.** If the Vendor has identified portions of its bid proposal as confidential in accordance with section 1.9, the Vendor must submit one copy of the bid proposal with the confidential material removed as required by section 1.9.4.

1.2.2 To achieve a uniform review process and the maximum degree of comparability, bid proposals shall be organized in the following manner:

1.2.2.1 Completed Bid Proposal Compliance Form (Attachment 1). If an exception is made by the Vendor, the Vendor must explain the exception and must describe the Vendor's proposed method for dealing with the exception. Exceptions that materially change the terms of the requirements of the RFP may result in disqualification of the Vendor's bid proposal.

1.2.2.2 Completed Authorization to Release Information Form (Attachment 3). The Vendor must sign the Authorization to Release Information form included with this RFP as an attachment. Failure to sign this Authorization will result in the bid proposal being rejected outright.

1.2.2.3 Service Requirements. The Vendor must provide a positive statement of compliance to each requirement to have its bid proposal considered. The bid proposal must fully address each specification and or requirement of the Chapter it is responding to and explain how the Vendor will accomplish or fulfill each specification and or requirement. Proposals must identify any deviation from any specification / requirements of this RFP that the Vendor cannot satisfy. Any deviations from the requirements of the RFP or requirements the Vendor cannot satisfy may result in disqualification of the Vendor's proposal.

1.2.2.4 Vendor's cost proposal which shall provide a clear description of all facets of the price proposed for the Chapter of the RFP, Vendor is responding to.

1.3 Clarification of Bid Proposals and Obtaining Information. ICN reserves the right to contact a Vendor after submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Vendor has provided goods or services to the ICN, or any other political subdivision wherever located, or requests for corrective pages in the Vendor's bid proposal. This information may be used to evaluate the Vendor's bid proposal. However, (except as provided for in section 5.1.2) the information received from the Vendor shall not be considered in the evaluation of a Vendor's bid proposal if the information materially alters the content of the bid proposal. ICN reserves the right to obtain information concerning any Vendor or any bid proposal from any source and to consider such information in evaluating the Vendor's bid proposal.

1.4 Cost of Bid Proposal. ICN is not responsible for any costs incurred by a Vendor which are related to the preparation or delivery of the bid proposal, or any other activities carried out by the Vendor as it relates to this RFP. The costs of preparation and delivery of the bid proposal are solely the responsibility of the Vendor.

1.5 Bid Proposal Obligations. The contents of the bid proposal and any clarification thereto submitted by the successful Vendor shall become part of the contractual obligation and incorporated by reference into the resulting contract.

1.6 Bid Proposals Property of ICN. All bid proposals become the property of the ICN and the State of Iowa and shall not be returned to the Vendor. At the conclusion of the selection process, the contents of all bid proposals will be placed in the public domain and be opened to inspection by interested parties subject to the exceptions provided in Iowa Code Chapter 22 or other applicable law.

1.7 Rejection of Bid Proposals. ICN reserves the right to reject any and all bid proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by ICN to award the contract. This RFP is designed to provide Vendors with the information necessary for the preparation of competitive bid proposals. This RFP process is for ICN's benefit and is intended to provide ICN with competitive information to assist in the selection of goods and services.

1.8 Disqualification. The ICN may reject outright and may not evaluate bid proposals for any one of the following reasons:

1.8.1 The Vendor fails to deliver the bid proposal by the due date and time.

1.8.2 The Vendor states that a service requirement cannot be met.

1.8.3 The Vendor's response materially changes a service requirement.

1.8.4 The Vendor's response limits the rights of the ICN.

1.8.5 The Vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "we understand" or "will comply" or merely repeating the requirement is generally not sufficient.

1.8.6 The Vendor fails to respond to the ICN's request for information, documents, or references.

1.8.7 Reserved.

1.8.8 The Vendor fails to include a completed, signed Authorization to Release Information Form (Attachment #3).

1.8.9 The Vendor fails to include a completed, signed Bid Proposal Compliance Form (Attachment #1).

1.8.10 The Vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.

1.8.11 The Vendor initiates unauthorized contact regarding the RFP with state employees.

1.8.12 The Vendor's exceptions to the contract terms and conditions in RFP Chapter 2 and Attachment #2 materially change the terms and conditions of or the requirements of this RFP.

1.8.13 The Vendor provides misleading or inaccurate responses.

1.8.14 The Vendor's proposal is materially unbalanced.

## 1.9 Public Records and Requests for Confidentiality.

1.9.1 The release of information by ICN to the public is subject to Iowa Code Chapter 22 and other applicable provisions of law relating to the release of records in the possession of a state agency. Vendors are encouraged to familiarize themselves with these provisions prior to submitting a bid proposal. All information submitted by a Vendor may be treated as public information by ICN unless the Vendor properly requests that information be treated as confidential at the time of submitting the bid proposal.

1.9.2 Any requests for confidential treatment of information must be included in a cover letter with the Vendor's bid proposal and must enumerate the specific grounds in Iowa Code Chapter 22 or other legal reasons which support treatment of the material as confidential and must indicate why disclosure is not in the best interests of the public. The request must also include the name, address and telephone number of the person authorized by the Vendor to respond to any inquiries by ICN concerning the confidential status of the materials.

1.9.3 Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the bid proposal submitted, as well as the original bid proposal, must be marked in this manner. Failure to properly mark information as confidential shall relieve the ICN from any responsibility if the information is viewed by the public, a competitor, or is in any way accidentally released.

1.9.4 In addition to marking the material as confidential material where it appears, the Vendor must submit one hard (printed) copy of the bid proposal from which the confidential information has been excised. This hard copy of the proposal MUST be clearly marked as "Excluding Confidential Materials". In addition to a hard copy, the Vendor may also include an electronic copy of the non-confidential portions of the bid proposal on CD-ROM using Microsoft Word. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the document as possible. The excised version must be submitted with the cover letter and will be made available for public inspection. This submittal is a mandatory requirement and is not subject to waiver. Failure to mark the confidential items and to provide the required one copy with confidential information excised shall be defined as allowance for the entire bid proposal to be treated as a public record.

1.9.5 The Vendor's failure to request in the bid proposal confidential treatment of material pursuant to this Section and the relevant laws and administrative rules will be deemed by ICN as a waiver of any right to confidentiality which the Vendor may have had.

1.10 Restrictions on Gifts and Activities. Iowa Code Chapter 68B contains laws which restrict gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Vendors are responsible for determining the applicability of this Chapter to their activities and for complying with these requirements. In addition, Iowa Code Chapter 722.1 provides that it is a felony offense to bribe a public official.

1.11 Restriction on Communication. From the issue date of this RFP until the ICN issues the Notice of Intent to award, Vendors may only contact the Issuing Officer with questions or other communications relating to this RFP. If a Vendor or someone acting on the Vendor's behalf attempts to discuss this RFP orally or in writing with any Commission member or any employee of the ICN other than the Issuing Officer, except as otherwise permitted by this RFP, the Vendor may be disqualified. No questions shall be asked of State of Iowa employees regarding this RFP, without prior notification and approval by the Issuing Officer, except as otherwise specifically permitted by this RFP.

1.12 Copyrights. By submitting a bid proposal the Vendor agrees that ICN may copy the bid proposal for purposes of facilitating the evaluation or to respond to requests for public records. The Vendor consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third party. ICN will have the right to use ideas or adaptations of ideas which are presented in the bid proposals.

1.13 Nonmaterial and Material Variances. The ICN reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of the ICN, it is in the ICN's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other Vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the ICN waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the Vendor from full compliance with RFP specifications or other contract requirements if the Vendor is awarded the contract. The determination of materiality is in the sole discretion of the ICN.

1.14 Release of Claims. With the submission of a bid proposal, Vendor agrees that it will not bring any claim or have any cause of action against ICN or the State of Iowa based on any misunderstanding concerning the information provided herein or concerning ICN's failure, negligent or otherwise to provide the Vendor with pertinent information as intended by this RFP.

1.15 Construction of RFP with Laws and Rules. This RFP is to be construed in light of pertinent legal requirements including Iowa Code Chapter 8D and Iowa Administrative Code Chapter 751. Changes in applicable laws and rules may affect the award process or the resulting Contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Vendors are encouraged to visit a web site containing references to the Iowa Code and the Iowa Administrative Code for information. A suggested address is [www.legis.iowa.gov](http://www.legis.iowa.gov) or [www.icn.iowa.gov](http://www.icn.iowa.gov)

1.16 Bid Proposal Evaluation and Award. The ICN shall evaluate all bid proposals that are timely submitted, in accordance with the requirements set forth in evaluation Chapter 5 of this RFP. The ICN shall not necessarily award the contract to the Vendor offering the lowest cost to the ICN. The ICN may award a contract to the most responsible Vendor meeting the requirements of this RFP and which, in the sole discretion of the ICN, provides the best value to the State after considering price and compliance with the provisions of the RFP.

1.17 RFP Copy. Copies of the RFP will be available by sending an email request to [brian.clayton@iowa.gov](mailto:brian.clayton@iowa.gov). In addition the RFP will also be available to the public via the ICN WEB site at [www.icn.iowa.gov](http://www.icn.iowa.gov). Vendors may also email the issuing officer and request a copy of the RFP (copy may be requested to be issued via e-mail or by mailing Vendor a printed copy).

1.18 Downloading RFP from the Internet. All amendments and responses to Vendor questions will be posted on the ICN's website at [www.icn.iowa.gov](http://www.icn.iowa.gov). Vendors are advised to check the ICN's website periodically for amendments to this RFP, because Vendors will not automatically receive amendments.

1.19 Definition of Contract. The full execution of a written contract shall constitute the making of a contract for services and no Vendor shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the successful Vendor and the ICN.

1.20 Award Notice and Acceptance Period. The ICN will send the Notice of Intent to award the contract to all Vendors submitting a timely bid proposal. Negotiation and acceptance of the contract shall be completed with the successful Vendor no later than sixty (60) days after Notice of Intent issuance date if there are no appeals filed. If the apparent successful Vendor fails to negotiate and deliver the executed contract by that date, the ICN may, in its sole discretion, cancel the award and award the contract to the next highest ranked Vendor. If the ICN cancels the award and awards the contract to the next highest ranked Vendor, the ICN will make a claim on the original successful Vendor's bid proposal security. The ICN reserves the right to continue negotiations after sixty days if, in ICN's sole discretion, ICN deems it to be in the best interests of ICN to do so.

1.21 No Minimum Guaranteed. The ICN anticipates that the selected Vendor will provide services as requested by the ICN. The ICN will not guarantee any minimum compensation will be paid to the Vendor or any minimum usage of the Vendor's services.

1.22 Criminal History and Background Investigation. The ICN reserves the right to conduct criminal history and other background investigations of the Vendor, its officers, directors, shareholders, or partners and personnel retained by the Vendor for the performance of the contract.

1.23 Hiring of ICN Staff. During the period from the date of issuance of this RFP until the Notice of Intent to award the contract, Vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any ICN employee, ITTC commission member, or any member of the RFP evaluation committee. A Vendor making such an offer or proposition may be disqualified from further consideration.

1.24 Discounts based on expected volume or activity levels as shown in this RFP and used as any form of Vendor's proposed pricing are at Vendor's risk. ICN does not guarantee any minimum usage or volume of activity requirements.



## CHAPTER 2 CONTRACTUAL TERMS

### 2.1 Contractual Terms Generally.

2.1.1 The Contract or Contracts which the ICN expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful Vendor or Vendors and this solicitation. The Contract between the ICN and any successful Vendor shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in Attachment 2, the offer of the Vendor contained in its bid proposal, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the ICN.

2.1.2 The Contract terms contained in Attachment 2 are not intended to be a complete listing of all Contract terms but are provided only to enable Vendors to better evaluate the costs associated with the RFP and the potential resulting Contract. Vendors should plan on such terms being included in any Contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in any pricing quoted by the Vendor.

2.1.3 By submitting a Bid Proposal, each Vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in the appropriate section of the Bid Proposal Compliance Form (Attachment 1). [If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in Attachment 1 of its Bid Proposal the specific Contract language it proposes to include in place of the provision.](#) Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the ICN, in its sole discretion, resulting in possible disqualification of the Bid Proposal. The ICN reserves the right to either award a Contract without further negotiation with the successful Vendor or to negotiate Contract terms with the selected Vendor if the best interests of the ICN would be served.

2.2 Additional Cost Items Not In Contract. ICN is unaware of any additional Contract terms that would add cost. Notwithstanding, should any Contract items arise that would cost additional monies; those costs shall be borne by the Vendor.

2.3 Equipment Delivery Schedule. Any equipment necessary for the Contract shall be delivered as agreed upon between the successful Vendor and the ICN.

2.4 Project Coordination. Upon award of a Contract, the ICN shall negotiate the schedule for project deliverables with the successful Vendor.

## CHAPTER 3 SERVICE REQUIREMENTS

3.1 Scope. The purpose of this Request for Proposal (“RFP”) is to solicit proposals from vendors who can provide public and media relations services for the Iowa Communications Network (“ICN”). The services to be performed by the selected Vendor will include, but are not limited to, the following: 1) Creation of a series of high-quality, professionally produced videos that are three/four minutes in length; 2) Design of printed materials and electronic documents for a variety of initiatives, which may include brochures, social media images, booklets, and/or flyers; 3) Media relations assistance, including content creation, media list generation, and editorial calendar research, and 4) assistance with event planning.

3.2 Expected Services. Each criterion in this section requires a response by providing information describing how the Vendor meets the criteria specified and providing the requested materials.

3.2.1 Videos. Vendor shall be asked to create a series of high-quality, professionally produced videos that are three/four minutes in length (work to include: conducting on-camera interviews, assisting ICN in drafting content, identifying recording studio location, recording of subject matter experts identified by ICN, editing, receiving approval, disseminating the unedited and final edited recordings to ICN). The videos would be leveraged extensively to reach audiences through outlets including:

- 3.2.1.1 Websites
- 3.2.1.2 Social media
- 3.2.1.3 Direct email campaigns
- 3.2.1.4 Sharing by customers

*Vendor shall provide at least three (3) samples of video materials the Vendor has created. Vendor shall include a brief description of the process used to arrive at the finished product.*

3.2.2 Design Services. Vendor shall be asked to design printed materials and electronic documents for a variety of initiatives. These materials may include brochures, social media images, booklets, and/or flyers.

*Vendor shall provide one (1) sample of each of creative material (brochure, social media image, booklet, and flyer) that the Vendor has created in the last six months. Vendor shall include a brief description of the process used to arrive at the finished product.*

3.2.3 Media Relations Consultation. Vendor shall be requested to provide media relations consultation and advice to the ICN and assist the ICN in the development of key media relations initiatives as needed. The firm will assist the ICN in drafting of news releases and advising the ICN regarding media relations. Media relations assistance includes, but is not limited to: content creation, pitching story leads, media list generation, and editorial calendar research.

3.2.3.1 Story Pitching. Vendor shall be asked to identify story leads to pitch to targeted reporters around the state. Topics may include: new ICN services and developments, innovative broadband uses by authorized users, statewide youth broadband advisory council updates, general broadband stories, broadband trends, or broadband connectivity challenges and solutions.

3.2.3.2 Public Affairs Programs. Vendor shall be asked to identify the most current and topical broadband storylines to pitch to television and radio programs.

*Vendor shall provide at least two (2) examples of its work product created as a result of its media consulting services. Vendor shall include a brief description of the process used to arrive at the finished product.*

3.2.4 In 2017 ICN will hold an event to further educate and engage authorized users, industry professionals, and the public about the ICN. Does Vendor have in-house staff that can provide event planning services?

*If so, Vendor shall provide detail of past events planned to include information such as, location, targeted audience, materials and services provided and costs associated.*

3.3 Vendor Experience and Qualifications. Each criterion in this section requires a response by providing all information describing how the Vendor will meet the criteria specified and providing the requested materials.

3.3.1 Creative Ability: Describe Vendor's creativity and ability to connect to target audience utilizing print, social media, and web-based tools. Provide samples of printed materials for agency to view scope of creativity.

3.3.2 Public Relations and Marketing Support: Vendor shall describe support services, best practice consulting options and professional services that Vendor can offer. Vendor shall identify any third party vendors involved in these relationships.

3.3.2.1 Media Relations Plan: Vendor shall describe its plan to increase media relations of ICN and Broadband Matters programs, products, and services. The plan should focus on increasing community awareness of broadband, cyber security, awareness of ICN's new service offerings, incorporating technology/broadband examples of ICN's authorized users, and ICN's broadband matters social movement, broadbandmatters.com.

3.3.3 Does Vendor have in-house ability to produce video clips, photo shoots, and public service announcements? If so, Vendor shall describe, detail its capabilities.

3.3.3.1 Video Plan: Vendor shall provide a plan to update current videos on ICN's Broadband Matters websites ([www.broadbandmatters.com](http://www.broadbandmatters.com)). The plan should focus on increasing technology usability and broadband.

3.3.4 Advertising: Vendor shall not use the ICN's name, logo, slogan, image or any data arising or resulting from this RFP or the resulting Contract as a part of any commercial advertising without the prior written consent of the ICN Executive Director or authorized designee.

3.3.5 Does Vendor have in-house staff that specializes in public relations management?

3.3.6 Does Vendor have in-house expertise and software to design publications or other materials?

3.3.6.1 Design Services Support: Describe support services, best practice consulting options and professional services that Vendor can offer. Vendors shall identify any third party contractors involved in providing these services.

3.3.7 Vendor shall detail its history of being able to deliver materials and or services by predetermined timelines as established by customer. Vendor shall provide examples of prior customer deliverables and timelines met.

3.3.8 Vendor shall confirm it has the ability to provide and receive Adobe InDesign or other Adobe formatted files to ICN through an online secure FTP site? Vendor shall also identify all other file formats which may be used.

3.3.9 Implementation: Vendor shall confirm its understanding that upon award of a Contract for services the parties shall negotiate an implementation schedule with the successful Vendor.

3.3.10 Vendor shall provide its number of years in business, providing the types of services sought by the RFP.

3.3.11 Vendor shall describe the level of technical experience its personnel have in providing the types of services sought by the RFP.

3.3.12 Vendor shall provide at least three (3) current or previous clients knowledgeable of the Vendor's performance in providing services similar to the services described in this RFP and a contact person, telephone number and email address for each reference.

3.3.13 Vendor shall list other state advertising or public relations contracts currently held by Vendor.

3.3.14 Approval of Concepts, Plans and Materials: Vendor shall have each concept completed for the ICN reviewed by its account team prior to presenting the concept to the ICN. All materials to be distributed must be approved in writing by the ICN's authorized designee prior to production of the advertisement or related material. The ICN reserves the right to approve and, in its discretion, modify or reject any and all schedules and plans submitted by the successful Vendor and to direct the successful Vendor to cease work in connection therewith. In such cases, upon reasonable notice by the ICN, the successful Vendor shall promptly notify all media, publishers, printers, engravers, artists, production houses, designers or other third parties engaged in carrying out such schedules or plans to cease work thereon. This provision shall not affect any liabilities and obligations of the ICN to the successful Vendor under the Agreement or any agreements, accounts, charges and expenses incurred by the successful Vendor as to activities approved by the ICN prior to notice of such modification or rejection.

3.3.15 Meetings: Vendor shall confirm its understanding that the Vendor must; 1) facilitate, at minimum, bi-weekly status meetings with the ICN's representative, 2) attend quarterly meetings with ICN's executive director and other leadership team members.

3.3.16 Ownership of Materials and Intellectual Property: Vendor shall confirm its understanding that all work products produced and or performed under the resulting agreement shall be owned by the ICN. Vendor shall not retain any rights to the work product. The Successful Vendor shall relinquish to the ICN any and all copyrights or privileges to materials and or concepts developed and delivered to the ICN under the resulting Contract. The materials and or concepts used herein includes, but is not limited to, written reports, studies, drawings or graphics, electronic source codes, electronic data systems or mechanical representations and any work of a similar nature which is required to be delivered by the successful Vendor to the ICN under the resulting contract. The successful Vendor shall include in the deliverable any copyrighted or trademarked matter without the written permission of the copyright or trademark owner for the ICN to use such copyrighted or trademarked matter. The successful Vendor agrees that any concepts, ideas, etc., developed pursuant to the Contract shall become property of the ICN if and when such concepts, ideas, etc., are incorporated into materials or goods during the term of the Contract.

3.4 Cost Proposal. Vendor shall provide its hourly rate sheet for all services requested or proposed within this RFP with a clear description of all facets of the prices proposed. Where prices are offered for segments of services explain in detail all the factors, variables, and other price components so that evaluators may be able to clearly ascertain the total cost for services being offered and at various volumes of service activity. It is Vendor's responsibility to provide sufficient detail so that prices, cost components, and total cost can be evaluated.

3.4.1 Vendor shall confirm that it is able to provide all of the services requested in Section 3.2 and understands that upon any award, the ICN will work with Vendor to further clarify the scope of work for individual requirements and arrive at a quote that works within the ICN budget.

3.4.2 Vendor shall confirm its understanding that it is not entitled to payment for services rendered pursuant to this Agreement if the ICN reasonably determines that the services have not been satisfactorily performed. The ICN may withhold that portion of the Vendor's fee that represents payment for the unsatisfactory services.

3.4.3 Monthly Reports: Vendor shall confirm its understanding that it will submit monthly project status reports indicating project budgets, billings to date, and expected costs to complete projects. The reports shall include total spent to date for the budget year.

## CHAPTER 4 EVALUATION CRITERIA

### 4.1 Award Criteria and Process.

4.1.1 An evaluation committee comprised of personnel employed by the State of Iowa (including ICN staff and any other agency staff as may be requested by ICN) will review and evaluate the proposals that meet all requirements of the RFP. ICN reserves the right to include personnel from outside the State of Iowa if ICN in its sole opinion deems that to be in the best interests of ICN. The evaluation committee will consider all information provided in the proposals when making its recommendation and the committee may also consider relevant information from other sources.

4.1.2 The evaluation committee reserves the right to request oral presentations and conduct a Best and Final Offer (BAFO) process with not more than four (4) RFP finalists whose RFP response packages scored the highest. The determination of whether to request an oral presentation and/or BAFO is entirely at the discretion of the evaluation committee. The identity of all finalists shall remain confidential until the ICN issues a notice of intent to award the contract. Oral presentations and/or submission of BAFOs shall be scheduled at a due date and time determined by the ICN. Any BAFO requested by the ICN shall be submitted in sealed envelopes to the Issuing Officer on or before the time and date determined by the ICN. Evaluation of BAFOs and/or oral presentations shall be conducted and scored in exactly the same manner as the original proposals. The evaluation committee shall consider the Technical Proposal and Agency Organization information available in the original response to the RFP as well as information presented in the oral presentation in determining the final score for the Technical Proposal and Agency Organization. Scores from the four (4) finalists on any BAFO and/or oral presentation shall replace the score achieved in the original evaluation.

4.1.3 The evaluation committee will make a recommendation to the Executive Director of the ICN indicating the committee's choice. The Executive Director will select the Vendor or Vendors to receive the Award of the contract. The Executive Director is not bound by the committee's recommendation. The ICN will send copies of the Notice of Intent to Award to all Vendors who submitted bid proposals.

4.2 Evaluation Criteria. The bid proposals will be evaluated using a scoring system which will be made available at the time of the Bid Opening. Evaluation of bid proposals will be based on, but not limited to, the general criteria, which are listed below in no particular order of importance. It shall be Vendor's responsibility to insure that the proposal offered fully iterates the Vendor ability to perform the RFP requirements, and to clearly show how the Vendor would perform the task or provide the service. The ICN shall not necessarily award the contract to the Vendor offering the lowest cost to the State. The ICN may award a contract to the most responsible Vendor meeting the requirements of this RFP and which in the determination of ICN provides the best value to the State after considering price and compliance with the provisions of this request

The general evaluation criteria include the Vendor information provided in response to this RFP.

ATTACHMENT 1  
PROPOSAL COMPLIANCE FORM  
RFP 16-046

Vendor affirms that the information contained in the bid proposal is true and accurately portrays all aspects of the goods or services or both contemplated by this RFP. The Vendor is aware that any substantive misinformation or misrepresentation may disqualify the bid proposal from further consideration. Vendor hereby certifies total compliance with all other terms, conditions and specifications of this RFP except as expressly stated below:

Chapter 1, Administrative Issues.

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Chapter 2, Contractual Terms (includes Attachment 2).

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Chapter 3, Technical Specifications for Transit Internet Providers.

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Chapter 4, Evaluation Criteria.

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I certify that I have the authority to bind the Vendor indicated below to the specific terms and conditions imposed in this RFP and offered in this bid proposal, and that by my signature on this document I specifically agree to all of the waivers, restrictions and requirements of this RFP as conditions precedent to submitting this proposal. I further state that in making this bid proposal that the Vendor has not consulted with others for the purpose of restricting competition or violating State or Federal anti-trust laws and has not knowingly made any false statements in this proposal.

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

BID PROPOSAL COMPLIANCE FORM

Page 2 of 2

Vendor providing bid proposal must complete each section of this Attachment and submit as part of its bid proposal.

Vendor Name (including all d/b/a or assumed names or other operating names of the Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company: \_\_\_\_\_

Number of employees: \_\_\_\_\_

Local office address that relates to the Vendor's performance under the terms of this RFP (if different from above):

Phone / Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Vendor accounting firm: \_\_\_\_\_

State of incorporation (if a corporation). State of formation (if a limited liability company or a limited partnership):

The successful Vendor will be required to register to do business in Iowa. If already registered, provide the date of the Vendor's registration to do business in Iowa. \_\_\_\_\_

Person to Contact Regarding This Bid Proposal: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Person to Contact Regarding Service Scheduling and Other Arrangements: \_\_\_\_\_

Address: \_\_\_\_\_

Phone / Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

ATTACHMENT 2  
TERMS AND CONDITIONS  
RFP 16-046

SECTION 1. IDENTITY OF THE PARTIES.

1.1 The Iowa Communications Network (ICN) is authorized by the Iowa Code Chapter 8D to operate a communications network in the State of Iowa. The ICN's address is Grimes State Office Building, 400 East 14<sup>th</sup> Street, Des Moines, IA 50319.

1.2 Vendor is a corporation qualified to provide advertising, marketing and public relations services and is authorized to conduct business in the State of Iowa. Vendor's address is \_\_\_\_\_.

SECTION 2. PURPOSE. The parties have entered into this Agreement for the purpose of Vendor providing advertising, marketing and public relations services specified in the Scope of Services attached and on purchase orders issued by the ICN. ICN is entering into this Agreement pursuant to Iowa Code Chapter 8D.

SECTION 3. TERM. This Agreement is effective upon signature of both Parties and shall continue for one year. The Agreement may be renewed for five (5) one year periods upon mutual written agreement of the Parties.

SECTION 4. DOCUMENTS INCORPORATED BY REFERENCE.

4.1 Incorporation of Bid Proposal Documents. The Request for Proposal (RFP) 16-046 and the Vendor's Bid Proposal in response to this RFP, together with any clarifications, attachments, appendices, amendments or other writings of the ICN or the Vendor (collectively Bid Proposal) are incorporated into this Agreement by this reference as if fully set forth in this Agreement.

4.2 Contractual Obligations of Vendor. The terms and conditions of the Bid Proposal and of the RFP are made contractual obligations of the Vendor.

4.3 Contents of Agreement. The parties acknowledge that this Agreement consists of this document as well as the RFP and the Bid Proposal and that the parties are obligated to perform as set forth in the RFP and the Bid Proposal to the same extent that they are obligated to perform the specific duties set forth in this document.

4.3.1 Order of Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Bid Proposal, any inconsistency or conflict shall be resolved as follows:

4.3.1.1 First by giving preference to the specific provisions of this Agreement.

4.3.1.2 Second, by giving preference to the specific provisions of the RFP.

4.3.1.3 Third, by giving preference to the specific provisions of the Bid Proposal.

4.4 Intent of References to Bid Documents. The references to the parties' obligations, which are contained in this document, are intended to change, supplement or clarify the obligations as stated in the RFP and the Bid Proposal. The failure of the parties to make reference to the terms of the RFP or Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Vendor of the contractual obligations imposed by the terms of the RFP and the Bid Proposal. Terms offered in the Bid Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. The contractual obligations of the ICN cannot be implied from the Bid Proposal.



SECTION 5. DEFINITIONS. The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa, and words of gender shall be held to include the other gender as the context requires. For the purposes of this Contract, the following terms and all other terms defined in this Contract shall have the meanings so defined unless the context clearly indicates otherwise.

5.1 "State" shall mean the State of Iowa and all of its departments, agencies, boards, and commissions, including the ICN.

5.2 "ICN" shall mean the Iowa Telecommunications and Technology Commission operating the Iowa Communications Network.

5.3 "Vendor" shall mean \_\_\_\_\_

5.4 "Agreement" or "Contract" shall mean this document and any amendments to this document or any other documents incorporated by reference.

## SECTION 6. SCOPE OF WORK.

### 6.1 Scope of Services.

6.1.1. The services to be performed pursuant to and as a result of this Agreement by the Vendor are described on Schedule A attached hereto and made a part hereof by this reference.

6.1.2 The Vendor shall prepare and deliver specifications to the ICN which will detail the design, technical and functional capabilities, look and feel, and other attributes related to the project, all as more fully described in Schedule A.

6.2 Amendments to Scope of Services and Specifications. The parties agree that Schedule A, Scope of Services, and the specifications, may be revised, replaced, amended or deleted at any time during the term of this Agreement to reflect changes in service or performance standards upon the mutual written consent of the parties.

6.3 Industry Standards. Services rendered pursuant to this Agreement shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and with generally acceptable industry standards of performance for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement the parties agree that the applicable specification shall be the generally accepted industry standard. As long as the ICN notifies Vendor promptly of any services performed in violation of this standard, Vendor will re-perform the services, at no cost to ICN, such that the services are rendered in the above-specified manner.

6.4 Non-Exclusive Rights. This Agreement is not exclusive. The ICN reserves the right to select other Vendors to provide services similar or identical to the Scope of Services described in this Agreement during the term of this Agreement.

6.5 Staffing. The ICN reserves the right to disapprove any employee of Vendor who is assigned to provide services pursuant to this Agreement or to request Vendor to remove an employee from providing services pursuant to this Agreement at any time during the Agreement's duration if the employee fails to perform as required by Vendor and/or ICN, which includes adherence to State of Iowa work rules and policies including background checks and training requirements.

## SECTION 7. COMPENSATION.

7.1 Payment Terms. The Vendor shall identify services rendered and submit itemized invoices for amounts owed on a monthly basis. ICN shall pay all approved invoices in arrears and in conformance with Iowa Code. ICN may pay invoices in less than 60 days as provided in Iowa Code; however, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code. Any sums owed to ICN by the Vendor shall be itemized and deducted from the Vendor's invoice prior to submission. Notwithstanding anything herein to the contrary, ICN shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if ICN believes the invoice is inaccurate or incorrect in any way. Invoices shall be submitted to ICN Finance – Accounts Payable, Grimes State Office Building, 400 East 14<sup>th</sup> Street, Des Moines, IA 50319.

7.2 Pricing. The pricing matrix shall be described in Schedule A. The parties agree that the pricing may be revised, replaced, amended or deleted at any time during the term of this Agreement upon the mutual written consent of the parties.

7.2.1 If Vendor fails to submit an invoice within 60 days after shipment of the goods or provision of the service pursuant to this Contract, the ICN shall be excused from any liability owing to the Vendor and shall not pay invoices submitted after the 60<sup>th</sup> day. Additionally, ICN must receive all fiscal year invoices no later than July 15. ICN shall be excused from any liability owing to the Vendor and shall not pay invoices submitted after July 15.

7.3 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs and expenses, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of Vendor.

7.4 Set Off. In the event that Vendor owes ICN or the State of Iowa any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any law; ICN may set off the sum owed to ICN or the State against any sum billed to ICN by the Vendor in ICN's sole discretion unless otherwise required by law. The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

7.5 Delay of Payment Due To Vendor's Failure. If the ICN in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is completed or delivered. In the event of partial performance, the ICN may withhold that portion of the Vendor's compensation, which represents payment for the unsatisfactory services.

7.6 The Vendor shall audit the invoices presented to the ICN to ensure that they are proper, current and correct. The Vendor has 30 days from the date of invoice to present and resolve any discrepancies with the ICN. The Vendor shall notify the ICN of any and all discrepancies at that the audit(s) reveals.

## SECTION 8. INSURANCE.

8.1 Coverage Requirements. The Vendor, and any subcontractors performing the services required under this Agreement, shall maintain in full force and effect, with insurance companies of recognized responsibility, at its own expense, insurance covering its work during the entire term of this Agreement and any extensions or renewals thereof. The insurance shall be of the type and in the amounts as reasonably required by the ICN. The Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to the Vendor's performance of this Agreement. All such insurance policies should remain in full force and effect for the entire life of this Agreement and shall not be canceled or changed except with the advance written approval of the ICN.

8.2 Types of Coverage. Unless otherwise requested by the ICN, Vendor shall, at its sole cost, cause to be issued and maintained during the entire term of this Agreement (and any extensions or renewals thereof) the insurance coverages set forth below, each naming the State of Iowa and the ICN additional insureds or loss payees, as applicable:

<i>Type</i>	<i>Amount</i>
Workers Compensation and Employer Liability	As Required By Iowa Law
General Liability (including contractual liability) written on an occurrence basis	
GENERAL AGGREGATE	\$3 million
PRODUCT LIABILITY	\$1 million
PERSONAL INJURY	\$1 million
COMPREHENSIVE AGGREGATE	\$1 million
EACH OCCURRENCE	\$1 million
Automobile Liability, including any auto, hired autos and non owned autos	\$1 million
COMBINED SINGLE LIMIT	

8.3 Coverage for State Property on Vendor Premises. The policies shall provide coverage for damages to the State's property, which occurs on the Vendor's premises or premises under the control of the Vendor or Vendor's subcontractors.

8.4 Claims Made Coverage. All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

8.5 Notice Regarding Cancellation. Certificates of insurance, which provide that the ICN will be notified at least thirty (30) days prior to cancellation of the coverage required by this Agreement must be provided by the Vendor and any subcontractors to the ICN at the time of execution of the Agreement or at a time mutually agreeable to the parties.

8.6 No Limitation of Liability. The receipt of insured certificates by the ICN does not constitute approval of the coverage contained in the certificates, and the Vendor remains responsible for determining that its insurance coverage meets each and every requirement of this Agreement. Acceptance of the insurance certificates by the ICN shall not act to relieve the Vendor of any obligation under this Agreement. Only companies authorized to transact business in the State of Iowa shall issue the insurance policies and certificates required by this Section. It shall be the responsibility of the Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

8.7 Warranty. The Vendor warrants that it has examined its insurance coverage to determine that the State of Iowa and the ICN can be named as additional insured without creating an adverse effect on the Vendor's coverage.

8.8 Waiver of Subrogation Rights. The Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against State of Iowa and the ICN. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the ICN.

## SECTION 9. CONFIDENTIAL INFORMATION.

9.1 During the course of this Agreement each party may disclose, to the other either directly or indirectly, certain data which is proprietary which shall be referred to as "Confidential Information" of the disclosing party and which must remain confidential. Confidential Information may include without limitation, among other things, such items as security information, user information, data, knowledge, trade secrets and other proprietary information, methodologies, developments, software, software documentation, inventions, processes, and other nonpublic information in oral, graphic, written, electronic or machine readable form.

9.2 The parties acknowledge that information and material in the hands of the ICN is generally public information unless it is specifically allowed by law to be maintained as Confidential Information.

9.3 The parties acknowledge that some information in the hands of the ICN is strictly confidential and is not subject to release as a matter of law. The Vendor shall abide by all such statutory provisions when handling sensitive ICN information identified as confidential.

9.4 All written or electronic Confidential Information shall be clearly marked as Confidential Information by the party providing the Confidential Information at the time of disclosure to the other party.

9.5 If the Confidential Information is disclosed orally, and reduced to writing, the receiving party must treat the information as Confidential Information.

9.6 The Vendor shall limit such identification to information it reasonably believes it is entitled to confidential treatment pursuant to Iowa Code Chapter 22 or other applicable law.

9.7 In the event a public records request is made to the ICN pursuant to Iowa Code Chapter 22, regarding the Confidential Information of the Vendor, the ICN shall immediately notify the Vendor of the request by telephone and fax. The ICN will respond to the request for information in compliance with IAC Chapter 22 with a release of the information unless the Vendor has obtained an injunction preventing release of the requested information

9.8 The obligations of this Agreement do not apply to Confidential Information which:

9.8.1 Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the Confidential Information to receiving party.

9.8.2 Was known to the receiving party prior to the disclosure of the Confidential Information from the disclosing party;

9.8.3 Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the Confidential Information;

9.8.4 Becomes public knowledge, other than through an act or failure to act of the disclosing party;

9.8.5 Is publicly available or in the public domain when provided;

9.8.6 Is independently developed by the disclosing party; or

9.8.7 Is disclosed pursuant to law, subpoena or the order of a court or government authority.

9.9 The parties shall have the following duties relating to the Confidential Information:

9.9.1 The Vendor shall designate one individual who shall remain the responsible authority in charge of all data collected, used or disseminated by the Vendor in connection with the performance of this Agreement. The Vendor shall accept responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the terms of this Agreement. The private and confidential data shall remain the property of the ICN at all times.

9.9.2 The Confidential Information of either party shall be held in strict confidence by the receiving party and shall not be disclosed or used by the receiving party without the prior written consent of the disclosing party, except as provided in this Agreement or as may be required by law pursuant to available confidentiality restrictions.

9.9.3 The parties shall use their best efforts to protect the Confidential Information in its possession.

9.9.4 The parties shall restrict disclosure of the Confidential Information solely to those of its employees, agents, consultants and attorneys with a need to know in order to accomplish the purpose of this Agreement.

9.9.5 The parties shall protect the Confidential Information from disclosure to or access by unauthorized persons.

9.9.6 The parties shall use the Confidential Information solely for the purpose of this Agreement and for no other purpose.

9.9.7 The parties shall not duplicate the Confidential Information in any form, except as may be necessary to accomplish the purpose of this Agreement.

9.9.8 The parties shall advise each of its employees, agents, consultants and attorneys who receive the Confidential Information of the obligations of confidentiality and restrictions on the use set forth herein.

9.9.9 The parties shall immediately return the Confidential Information and all copies thereof, to each other upon the earlier of the expiration of the need therefore or the termination of this Agreement in order to accomplish the purpose.

9.10 The provisions of this Agreement shall apply to all Confidential Information disclosed by the parties to each other over the course of this Agreement. The parties' obligations under this provision shall survive expiration and termination of this Agreement and shall be perpetual.

9.11 The Vendor shall indemnify the ICN for a violation of this Section. The Vendor shall notify the ICN prior to the destruction of these materials and shall provide the ICN with the opportunity for proper destruction of these materials.

9.12 No Confidential Information will be exported to any country in violation of the United States Export Administration Act and the regulations thereunder.

#### SECTION 10. VENDOR WARRANTIES.

10.1 Construction of Warranties Expressed in this Agreement with Warranties Implied by Law. All warranties made by the Vendor in all provisions of this Agreement and the bid proposal by the Vendor, whether or not this Agreement specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the ICN, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

10.2 The Vendor warrants that all the concepts, materials produced, the work product and the information, data, designs, processes, inventions, techniques, devices, and other such intellectual property furnished, used, or relied upon by the Vendor or the ICN will not infringe any copyright, patent, trademark, trade dress, or other intellectual property right of the Vendor or others. Any intellectual property provided to the ICN pursuant to the terms of this Agreement, shall be wholly original with the Vendor or the Vendor has secured all applicable interests, rights, licenses, permits, or other intellectual property rights in such concepts, materials and work.

10.3 The Vendor represents and warrants that the concepts, materials and the ICN's use of same and the exercise by the ICN of the rights granted by this Agreement shall not infringe upon any other work, other than material provided by the ICN to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

10.4 The Vendor warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

10.5 The Vendor warrants that the deliverables under this Agreement will operate in conformance with the terms and conditions of this Agreement.

10.6 The Vendor warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity which might derogate, encumber, or interfere with the rights granted to the ICN.

10.7 The Vendor warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that the ICN will not have any obligations with respect thereto.

10.8 The Vendor warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, and methodologies used in connection with providing the services contemplated by this Agreement.

10.9 The Vendor expressly warrants to the standards in the industry all aspects of the goods and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

10.10 The Vendor unconditionally warrants that all equipment supplied and installed for the purpose of fulfilling its obligations under this Agreement are fit for the purpose intended, that it complies with industry standards and that the equipment is compatible with the State's equipment.

**SECTION 11. INDEMNIFICATION BY VENDOR.** The Vendor agrees to defend, indemnify and hold the ICN, and the State of Iowa, its employees, agents, board members, appointed officials and elected officials, harmless from any and all demands, debts liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, including the reasonable value of time expended by the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the ICN or the State of Iowa related to or arising from:

11.1 Any violation or breach of this Agreement including without limitation any of the Vendor's representations or warranties; or

11.2 Any acts or omissions, including, without limitation, negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, board members, contractors, subcontractors, or counsel employed by Vendor in the performance of this Agreement, or any other reason in connection with the goods and services provided under this Agreement; or

11.3 Claims for any violation of any intellectual property right including but not limited to infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the any of the goods or service performed in accordance with this Agreement; or

11.4 The Vendor's performance or attempted performance of this Agreement; or

11.5 Any failure by the Vendor to comply with all local, State and Federal laws and regulations; or

11.6 Any failure by the Vendor to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa.

11.7 The Vendor's duty to indemnify as set forth in this Section shall survive the expiration or termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by the ICN.

## **SECTION 12. TERMINATION.**

12.1 Termination For Lack Of Authority or Funding. Notwithstanding anything in this Agreement to the contrary and subject to the limitations, conditions and procedures set forth below, the ICN shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following for which ICN will provide the Vendor with written notice of cancellation:

12.1.1 The Legislature or Governor fails, in the sole opinion of the ICN, to appropriate funds sufficient to allow the ICN, or any state agency or department charged with responsibility to perform any of the ICN's obligations under this Agreement, to either meet its obligations under this Agreement or to operate as required to fulfill its obligations under this Agreement; or

12.1.2 If funds are de-appropriated, not allocated or if the funds needed by the ICN, in the ICN's sole discretion, are insufficient for any other reason; or

12.1.3 If the ICN's, or any responsible State agency's or department's authorization to conduct its business is withdrawn or there is a material alteration in the programs or any other program the ICN administers; or

12.1.4 If the ICN's duties are substantially modified.

12.2 Termination for Cause. The ICN may terminate this Agreement upon written notice for the substantial breach by Vendor of any material term if such breach is not cured by Vendor within the time period specified in the ICN's notice of breach or any subsequent notice or correspondence delivered by the ICN to Vendor. If a cure is feasible and an opportunity to cure is provided, the notice shall specify the exact date by which the condition must be cured. Following expiration of the opportunity to cure or notice from the ICN, the ICN may seek any legal or equitable remedy authorized by this Agreement or by law. Substantial breach events include but are not limited to the following:

12.2.1 Vendor fails to perform as required by this Agreement.

12.2.2 Vendor fails to make substantial and timely progress toward performance or fails to meet any of the material specifications and requirements stated in this Agreement, including without limitation the warranties provided in this Agreement, in the RFP or in the Vendor's bid proposal.

12.2.3 Vendor fails to conform to the specifications as required by the RFP and the Vendor's response to the RFP.

12.3 Termination for Convenience. Following 30 days written notice, the ICN may terminate this Contract in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the Vendor. Termination for Convenience can be for any reason or no reason at all if it is in the best interests of the ICN.

12.4 Immediate Termination. The ICN may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

12.4.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect or incomplete.

12.4.2 Vendor fails to perform, to the ICN's satisfaction, any material requirement of this Agreement or is in violation of any material provision of this Agreement, including, without limitation, the express warranties made by the Vendor.

12.4.3 The ICN determines that satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur.

12.4.4 Vendor becomes subject to any bankruptcy or insolvency proceeding under Federal or State law to the extent allowed by applicable Federal or State law including bankruptcy laws.

12.4.5 Vendor terminates or suspends its business.

12.4.6 The ICN reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable Federal or State law.

12.4.7 It is alleged that Vendor's processes or materials violate any valid patent, trademark, copyright, other intellectual property right or contract, and the ICN reasonably believes that the allegation may impair Vendor's performance of this Agreement.

12.4.8 Vendor has failed to comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

12.4.9 Vendor has engaged in conduct that has or may expose the ICN to liability, as determined in the ICN's sole discretion.

12.4.10 Vendor has a conflict of interest that interferes with fair competition or conflicts with an interest of the ICN as determined in the ICN's sole discretion.

12.5 In the event of termination of this Agreement for any reason by the ICN, the ICN shall pay only the amounts, if any, due and owing to Vendor for services actually rendered up to and including the date of termination of the Agreement and for which the ICN is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. This provision in no way limits the remedies available to the ICN in the event of a termination under this provision. However, the ICN shall not be liable for any of the following costs:

12.5.1 The payment of Unemployment Compensation to Vendor's employees;

12.5.2 The payment of Workers' Compensation claims which occur during the Agreement or extend beyond the date on which the Agreement terminates.

12.5.3 Any costs incurred by Vendor in its performance of the Agreement including but not limited to startup costs, overhead or other costs associated with the performance of the Agreement.

12.5.4 Any taxes that may be owed by Vendor for the performance of this Agreement including but not limited to sales taxes, excise taxes, use taxes, income taxes or property.

12.6 Vendor Obligations upon Termination. Upon expiration or termination of this Agreement, or upon request of the ICN, the Vendor shall:

12.6.1 Immediately cease using and return to the ICN any personal property or material, whether tangible or intangible, provided by the ICN to the Vendor and in its, or any subcontractor's, control or possession;

12.6.1.1 If vendor personnel have been issued security badges or keys enabling access to State facilities, vendor shall return them to ICN at any time upon ICN request or if the person identified on the badge leaves the employ of the vendor.

12.6.2 Upon request from the ICN, destroy any personal property or material, whether tangible or intangible at no additional cost to the ICN, and verify in writing that the designated property or material has been destroyed;

12.6.3 Comply with the ICN's instructions for the timely transfer of active files and work being performed by Vendor under this Agreement to the ICN or the ICN's designee;

12.6.4 Protect and preserve property in the possession of the Vendor in which the ICN has an interest;

12.6.5 Stop work under this Agreement on the date specified in any notice of termination provided by the ICN;

12.6.6 Cooperate in good faith with the ICN, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Vendor.

12.6.6.1 Upon termination of the contract for any reason vendor shall provide the ICN a final report detailing current operational status of each unit, also identifying any potential repairs each unit may need. Vendor may also be asked to meet with the ICN and replacement vendor to assist in a transfer of knowledge related to the units. If vendor is requested to attend this type of meeting, vendor will be allowed to invoice ICN for the time spent on site.

12.7 Care of Property. The Vendor shall be responsible for the proper custody and care of any State owned tangible personal property furnished for the Vendor's use in connection with the performance of the Agreement, and the Vendor will reimburse the ICN for such property's loss or damage caused by the Vendor, normal wear and tear excepted.



12.8 Reduction of Resources. If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

## SECTION 13. CONTRACT ADMINISTRATION.

13.1 Independent Contractor. The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any agency, division or department of the State. Neither the Vendor nor its employees shall be considered employees of the ICN for Federal or State tax purposes. The ICN will not withhold taxes on behalf of the Vendor (unless required by law).

### 13.2 Compliance with the Law and Regulations.

13.2.1 Compliance with the Law and Regulations. Vendor shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including without limitation all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating the use of targeted small businesses as subcontractors or suppliers.

13.2.2 The Vendor declares that it has complied with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement, including without limitation, laws governing State of Iowa procurement and contracting.

13.2.3 When applicable or necessary by law the Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. The Vendor shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to the fulfillment of this Agreement.

13.2.4 The Vendor shall comply with all of the reporting and compliance standards of the Department of Management regarding equal employment.

13.2.5 The Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC Chapter 4.

13.2.6 The ICN may consider the failure of the Vendor to comply with any law or regulation as a material breach of this Agreement. In addition, the Vendor may be declared ineligible for future State contracts or be subjected to other sanctions for failure to comply with this Section.

13.2.7 It shall be agreed that both parties will comply with the requirements of Iowa House File 687 2001 to include, if this is a Service agreement function, in the Agreement terms providing for:

13.2.7.1 Performance Requirements, Vendor shall meet or exceed the performance requirements listed within the Scope of work.

13.2.7.2 Performance Inspection. Inspections will be performed on a case-by-case basis. The ICN may at any time review Vendor's performance hereunder. Vendor hereby agrees to provide all reasonable cooperation in the performance of such reviews.

13.2.7.3 Payment Deduction. If ICN determines in good faith that Vendor performance hereunder is unsatisfactory; the ICN may withhold payment until the situation is resolved to the satisfaction of the ICN. If the Vendor is unable to resolve the situation to the satisfaction of the ICN, the withholding amount may be forfeit by the Vendor.

13.3 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

13.4 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the State and the Vendor.

13.5 Choice of Law and Forum.

13.5.1 The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

13.5.2 In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

13.5.3 This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the State of Iowa.

13.6 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

13.7 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

13.8 Consent to Service. The Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints \_\_\_\_\_ at \_\_\_\_\_ as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, the Vendor shall immediately appoint a new agent and provide the ICN with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the ICN. Nothing in this provision will alter the right of the ICN to serve process in another manner permitted by law.

13.9 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the ICN and the Vendor for the services provided in connection with this Agreement.

13.10 Waiver. Any breach or default by either party shall not be waived or released other than by a writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

### 13.11 Notices.

13.11.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by electronic mail or facsimiles, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the ICN: ICN Contracting Officer  
Grimes State Office Building  
400 East 14<sup>th</sup> Street  
Des Moines, IA 50319

If to the Vendor: [Vendor may provide one (1) contact]

13.11.2 Each such notice shall be deemed to have been provided:

13.11.2.1 At the time it is actually received; or,

13.11.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

13.11.2.3 Within five days after deposited in the U.S. Mail in the case of registered or certified U.S. Mail.

13.11.2.4 When verified by automated receipt or electronic logs if sent by facsimile or email.

13.11.3 Copies of such notice to each party shall be provided separately.

13.11.4 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

13.12 Cumulative Rights. The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law. Nothing in this Agreement shall be construed as affecting, impairing or limiting the equitable or legal remedies to which either party may be entitled as a result of any breach of this Agreement.

13.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

13.14 Express Warranties. The Vendor expressly warrants all aspects of the items and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

13.15 Warranty Regarding Solicitation. The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.

13.16 Obligations of Joint Entities. If the Vendor is a joint entity consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the Agreement activities.

13.17 Obligations Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the Vendor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

13.18 Time is of the Essence. Time is of the essence with respect to the successful performance of the terms of this Agreement. The Vendor shall ensure that all personnel providing services to the ICN are responsive to the ICN's requirements in all respects.

13.19 Authorization. Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement. This Agreement constitutes a legal, valid and binding obligation upon the parties in accordance with its terms.

13.20 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

13.21 Counterparts and Facsimile Signatures. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The parties further agree that the signatures on this Agreement or any amendment or schedule may be manual or a facsimile signature of the person authorized to sign the appropriate document. All authorized facsimile signatures shall have the same force and effect as if manually signed.

13.22 Use of Third Parties/Prime Vendor Responsibilities. The ICN acknowledges that the Vendor may enter into Agreement with third parties for the performance of any of the Vendor's obligations under this Agreement. All subcontracts shall be subject to advance written approval by the ICN. The Vendor may enter into these contracts to complete the project provided that the Vendor remains responsible for all services performed under this Agreement. All restrictions, obligations and responsibilities of the Vendor under this Agreement shall also apply to subcontractors. The ICN shall consider the Vendor to be the sole point of contact with regard to all matters related to this Agreement and is not required to initiate or maintain contact with any subcontractor. ICN may choose to deny use of any specific third party contractor at ICN's sole discretion, in which case the Vendor must obtain a different third party contractor.

#### 13.23 DATE PROCESSING WARRANTY.

13.23.1 The Vendor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Vendor in connection with its performance of this Agreement, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the centuries, including leap year calculations, when used in accordance with the item(s) documentation provided by the Vendor.

13.23.2 If the items to be developed and delivered under this Agreement are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Agreement. The remedies available to the ICN for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

13.23.3 Nothing in this warranty shall be construed to limit any rights or remedies of the ICN under this Agreement with respect to defects in the items other than the Date Processing Warranty.

13.24 Force Majeure. Neither Vendor nor the ICN shall be liable to the other for any delay or failure of performance of this Agreement; and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure".

13.24.1 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force majeure" does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor; claims or court orders which restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

13.24.2 If a "force majeure" delays or prevents Vendor's performance, the Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the ICN.

13.24.3 During any such period, the Vendor shall continue to be responsible for all costs and expenses related to alternative performance.

13.24.4 This Section shall not be construed as relieving the Vendor of its responsibility for any obligation which is being performed by a subcontractor or supplier of services unless the subcontractor or supplier is prevented from timely performance by a "force majeure".

13.25 Records Retention and Access. The Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State or any authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent validation records, financial records, accounting records, books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to or created as a result of the performance of this Agreement. These records shall be made available to the State, its designees, the Auditor, or an authorized representative of the United States government at reasonable times and at no cost to the State during the term of this Agreement and for a period of at least (5) years following the termination, cancellation or expiration of this Agreement.

13.26 Taxes. ICN declares and Vendor acknowledges that the Vendor and its subcontractors may be subject to certain taxes including but not limited to sales tax, motor vehicle fuel tax, personal or corporate income tax or other taxes or assessments, and to licensing fees or other miscellaneous fees or charges which may be imposed by Federal, State or local law or ordinance. The Vendor and its subcontractors shall be solely responsible for the payment of such taxes. The Vendor shall promptly pay all such taxes, fees or charges when due. ICN is a tax-exempt entity and the Vendor shall not attempt to pass on any costs, including surcharges and fees, to the ICN that are attributable to federal, state, or local taxes, including sales tax, motor fuel tax, property tax, or personal or corporate income tax.

13.27 Universal Service Fund Charges. The parties agree that the ICN has been recognized by the FCC as a telecommunications carrier and a re-seller of the Services to be provided by Vendor under this Agreement. The ICN incorporates the Services into services offered to its own customers. The ICN contributes directly to the federal Universal Service Fund, as required, based upon revenue from its end-user customers. Based on the foregoing representations, the ICN will not be required to pay the Federal Universal Service Fee ("FUSF") of the Vendor or its successor(s).

13.28 Further Assurances and Corrective Instruments. The Vendor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

13.29 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, which will not be unreasonably withheld. For purposes of construing this clause, a transfer of a controlling interest in Vendor shall be considered an assignment. If either party, in its sole discretion, determines that the other party's assignment of this Agreement to another person or entity is not in the determining party's best interests, the determining party

may elect to terminate this Agreement with the other party without penalty upon thirty (30) days written notice to the Vendor.

13.30 Headings or Captions. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

13.31 The ICN reserves the right to conduct criminal history and other background investigations of the Vendor, its officers, directors, shareholders, or partners and personnel retained by the Vendor for the performance of this Agreement.

13.32 No Minimums Guaranteed. The ICN does not guarantee any minimum usage of the Vendor's services or make any volume commitment under this Agreement.

#### SECTION 14. BUSINESS DOWNTURN.

14.1 In the event of a business downturn or budget difficulties beyond the control of the ICN, including budget difficulties of other authorized users of the ICN or significant restructuring or reorganization, any of which significantly reduces the volume of Services required by the ICN, with the result that ICN will be unable to meet its revenue or volume commitments under this Agreement, Vendor and the ICN will cooperate in efforts to develop a mutually agreeable alternative.

#### SECTION 15. REDUCTION OF RESOURCES.

15.1 If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

15.2 In such event, Vendor shall estimate, in writing and in good faith, the aggregate decreased charges to Vendor from ICN's ceasing to perform such Services and shall provide such written estimate to ICN, no later than 30 days from Vendor's receipt of ICN's notice. ICN, upon receipt of such estimate, may then elect by written notice given to Vendor within 15 days following receipt of Vendor's written estimate to:

15.2.1 Withdraw its request for a cessation of part of the Services;

15.2.2 Implement such partial cessation of Services based upon the estimate of Vendor; or

15.2.3 Request that Vendor negotiate with ICN regarding the aggregate reduction in the Annual Service Charges due to Vendor from ICN hereunder as a result of the partial cessation of Services. If ICN shall elect to request Vendor to negotiate, the parties shall promptly negotiate in good faith regarding the amount.

SECTION 16. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Iowa Telecommunications and Technology Commission Operating the  
IOWA COMMUNICATIONS NETWORK

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[VENDOR will be listed]:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACHMENT 3  
AUTHORIZATION TO RELEASE INFORMATION  
RFP 16-046

\_\_\_\_\_ (Name of Vendor) hereby authorizes any person or entity, public or private, having any information concerning the Vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in this RFP, to release such information to the State.

The Vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Vendor is willing to take that risk. The Vendor agrees to release all persons, entities, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

\_\_\_\_\_  
Printed Name of Vendor Organization

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date